IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL SECOND APPEAL No. 299 of 1999

DWARKADASS
V/S
NARAYAN DASS

Mr. RR NAGORI, for the appellant / petitioner

Mr. BK THANVI, for the respondent

Date of Order : 3.11.2006

HON'BLE SHRI N P GUPTA,J.

JUDGMENT

REPORTABLE

Heard learned counsel for the parties.

By the impugned decree, the learned lower Appellate Court has decreed the plaintiff's suit for eviction on the ground of subletting, finding that the tenant defendant no. 1 Dwarka Das has sublet the premises (shop) to Khataumal. Regarding partnership it has been found, that the shop was sublet to Khataumal, as it is not shown that thereafter it reverted back to the original tenant, and thereafter partnership was entered into. Be that as it may. The appeal was filed challenging this finding, and contending, that in the circumstances of the case, it cannot be said that there has been any subletting.

The decree was passed by the learned lower Appellate Court on 13.8.1999, and the present appeal was

filed on 6.10.1999, therein the respondent appeared as caveator on 8.10.1999, on which date it was adjourned with the undertaking of the respondent that he will not execute the decree, and since then the matter is being adjourned.

During pendency of this appeal as above, the learned counsel representing caveator happened to be elevated as Hon'ble Judge of this Court, and therefore, vide order dt. 10.12.2001 notice was ordered to be issued to the respondent, of the appeal as well as stay petition, and execution of the decree was stayed. Thereafter on 7.2.2005 an application was filed on behalf of the appellant under O. 22 Rule 3 C.P.C., alleging that the appellant no. 1 Dwarka Das has expired on 13.11.2004, leaving behind three legal representatives, and alleging that the deceased was ailing before death, and his son Sampat Raj was working with him before his death, therefore, prayer was made for substitution of legal representatives.

Reply to this application was filed on 5.7.2005, disputing the deceased to be ailing before death, or Sampat Raj working with the deceased. It was pleaded that Sampat Raj was carrying on independent business, in the name and style of Rahul Kangan Store in Laxmi Bazar, Chiranjiyo Ka Jal, which business is still continuing, and the allegation that Sampat Raj was working with the deceased is ex-facie

wrong. It was also contended that the other three defendants were sub tenants; while according to the deceased defendant they were not subtenants but then defendants no. 3 and 4 were his partners, while defendant no. 2 being the father of defendants no. 3 and 4 was sitting on the shop, and it has been found that the partnership was entered into in the year 1985. In such circumstances, it was contended that when the shop was being run by the defendants no. 3 and 4 Jhamandas and Ramesh Kumar, it does not stand to reason that Sampat Raj was working with the deceased before his death, and it was given out that Sampat Raj does not fall within the definition of tenant as contained in Section 3(vii) of the Rajasthan Premises (Control of Rent & Eviction) Act, hereafter referred to as the Act, therefore, the protection of the Act is not available to the appellants, and the appeal is liable to be dismissed.

Arguing this application, learned counsel for the appellant submitted, that Full Bench of this Court in, Smt. Ramjeevani Vs. Narati Bai reported in 1991(1) RLW-222, has held that the requirement of carrying on business with the deceased at the time of his death is not applicable as conjunctive condition, where the legal representatives are spouse, son and daughter, and this requirement is applicable only where the legal representative is other legal heir in accordance with the personal law, and since

Sampat Raj is his son, the protection is available. Learned counsel also pointed out the two subsequent judgments of this Court, in Smt. Usha Vs. Sukhsampat Mal reported in 1995(1) RLW (Raj.)-14, and Chiman Lal Vs. Narendra Kumar reported in 1995 DNJ (Raj.)-563, wherein the contrary view has been taken, by holding, that the judgment in Ramjeevani's case is no more a good law. These two judgments are Single Bench judgments, while the judgment in Ramjeevani's case is Full Bench judgment. According to the learned counsel the question is required to be gone into, and the protection is available to wife, sons and daughter, irrespective of the question as to whether they were carrying on business with the deceased or not, even if it is assumed that Sampat Raj was not carrying on business with the deceased at the time of his death.

Learned counsel for the respondent, on the other hand, relying upon a judgment of this Court in Mohd. Kasam Vs. Ghasi Lal reported in 2003(3) DNJ (Raj.)-1477 submitted that the judgment in Ramjeevani's case does not hold good, as Ramjeevani's case does not consider the judgment of Hon'ble the Supreme Court in Tara Chand Vs. Ram Prasad, reported in (1990) 3 SCC-526, it is no more a good law, and the appeal cannot be entertained, as the other three defendants are subtenant, and therefore, the protection is not available to the legal representatives.

Learned counsel for the appellant then contended that it has categorically been alleged in the application, that Sampat Raj was carrying on business with the deceased since before his death, and that the firm is not a tenant, and in any case even if the deceased entered into partnership, during lifetime of the deceased, Sampat Raj was looking after the business of the father, and therefore, Sampat Raj is required to be impleaded as party, and is entitled to protection.

On the other hand, learned counsel for the respondent maintained the stand taken in para-3 of the reply.

I have considered the submissions.

So far the contention raised on the basis of Ramjeevani's case is concerned, from a bare perusal thereof it is clear that Ramjeevani's case does not take into account, rather even does not refer to, the judgment of Hon'ble the Supreme Court in Tara Chand's case. Obviously it could not be referred, as the judgment in Ramjeevani's case was rendered on 22.12.1989, while the judgment of Hon'ble the Supreme Court in Tara Chand's case is dated 3.5.1990. Since in Tara Chand's case the view taken is, as quoted in the judgment of Usha's case and Chiman Lal's case, therefore, obviously in view of the subsequent

judgment of Hon'ble the Supreme Court, the judgment in Ramjeevani's case cannot be said to be holding the field at all.

The obvious result is, that in order to entitle to protection of the Act, each of the heir, or legal representatives, claiming protection, has to satisfy the other requirement also, about living with the deceased tenant, or carrying on business with him, in case of residential, and commercial premises, respectively. Therefore, the first submission made by the learned counsel is negatived.

I now proceed to examine as to whether it can be said, that Sampat Raj was carrying on business with the deceased at the time of his death upto his death. Of course, in para 3 of the application it is alleged, that the appellant no. 1 was ailing before death and his son Sampat Raj was working with him in the shop since before his death. While according to the respondent, Sampat Raj is carrying on independent business in the name and style of Rahul Kangan Store in Laxmi Bazar. The allegation about his carrying on business with the deceased is ex-facie wrong.

In order to appreciate the preponderance of probabilities about reliability of the version of the appellant, I requested learned counsel for the appellant to

read statement of D.W.1 Dwarka Das and D.W.3 Jhaman Das, and from the reading of those statements it is clear that even according to the deceased appellant, he had entered into partnership with other two defendants Ramesh Kumar and Jhaman Das, and three persons were carrying on business in the shop, as partnership firm. Admittedly before death of Dwarka Das the partnership is not alleged to have been dissolved, and the learned counsel for the appellant could not point out any legal authority under the Partnership Act, whereunder any member of the family of one of the partners can be said to be legally entitled to carry on business with the partner in the shop. Obviously, therefore, it cannot be said, that Sampat Raj was carrying on business in the shop, along with Dwarka Das. This is one aspect of the matter. The other more important aspect of the matter is, that requirement of Section 3(vii)(b) is that such carrying on business with the deceased should also be **"as member of his family"**. Obviously, the partner was partner in his personal capacity, and the whole family was not partner, and therefore it cannot be said that Sampat Raj was carrying on business with the deceased should also be **"as member of his family"**. In that view of the matter, taken from any stand point, it cannot be said that the legal representative including Sampat Raj is at all entitled to any protection of the Rent Control Act.

That being the position, in my view, the appeal

does not involve any substantial question of law. The same is, therefore, dismissed.

However, at the request of the learned counsel, the appellant is granted one year's time to vacate the suit premises, on the conditions, that the defendant gives an undertaking before the learned trial court within one month from today, that on or before the expiry of the above period, he will peacefully hand over the vacant possession of the suit premises to the plaintiff, and that during this period, he will not, in any manner, transfer the possession of the suit premises to anybody. Likewise, the entire decreetal amount, so also all arrears of rent, if any, shall be deposited by the appellant in the trial court within one month from today, and shall further continue to deposit amount equal to the monthly rent, by way of damages for use and occupation, by 15th of each succeeding month, till the actual delivery of possession. In case the appellant fails to comply with any of the above conditions, the respondent will become automatically entitled to execute the decree forthwith.

(N P GUPTA),J.

/Sushil/